Supreme Court, U.S.
FILED

10 861 DEC 28 2010

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

HERMAN ASTER, Petitioner,

vs.

ZDENKA ASTER, *Respondent.*

On Petition For Writ Of Certiorari
To The Court Of Appeal
For The State Of California Sixth Appellate District.

PETITION FOR WRIT OF CERTIORARI

The Petitioner
HERMAN ASTER,
2167 Riordan Drive
San Jose, California, 95130
Telephone (408) 378-1457

QUESTION PRESENTED FOR REVIEW

In question is difficulty of appellate court to "discern the gravamen of appellant's argument" in peremptory challenge against judge Mary E. Arand, in court's decision expected to rely only on un-opposed Opening Brief and Oral Argument.

In question is second appointment of judge Margaret Johnson to the case, discredited by atrocities of having me jailed, my court documents destroyed and subjected to enforced tests of some experimental vaccines.

THE PARTIES ARE

The Petitioner Herman Aster

The Respondent Zdenka Aster represented by
attorney Dolly Ares, BN 87786,
514 Monterey Street, Hollister, CA 95023.
Phone: 831-637-6775, Fax 831-637-6779

Honorable Mary E. Arand, Judge,
Superior court Santa Clara, Department 75

Honorable Margaret Johnson, Judge,
Superior court Santa Clara, Department 76

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PETITION FOR WRIT OF CERTIORARI

CITATIONS OF ORDERS AND OPINIONS

Denials, orders and opinions filed in the case:
1-99-FL086124 in Superior Court,
Judgment of Dissolution filed January 9, 2001
H034855 in Court of Appeal,
Opinion

H034855 in Court of Appeal,
Petition for Rehearing denial

S186142 in Supreme Court of California
Petition for Review denial En Banc

STATEMENT ON BASIS FOR JURISDICTION

Appellate opinion to be reviewed was filed August 3, 2010

Petition for Rehearing, filing denied August 26, 2010 [1]

Petition for Review in Supreme Court of California denied October 13, 2010

All remedies in lower courts are exhausted.

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[1] Denied as filed too late. Please compare Appellate Opinion's date of filing with date of my declared absence in Oral Argument (last sentence)

CONSTITUTIONAL PROVISION

This appeal relies on compliance with Constitution of US Supreme Court Rule 10(a) "a United States court of appeals ... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by lower court, as to call for an exercise of this Court's supervisory power."

STATEMENT OF THE CASE

I, Herman Aster petition for a writ of certiorari to review the appellate opinion on denial of Peremptory Challenge and grant the prayer to appoint an impartial judge to oversee final settlement in my divorce case.

Brief history of the Case:

Five revives has been risen to Court of Appeal, H022230, H027461, H027866, H032641 and H034855 in the case 1-99-FL086124 and three revives H034009, H034313 and H034952 in associated case 1-08-CV102611 in last 11 years.

Association can't be denied: Oral arguments in H034855 and H034952 have been heard the same date and time July 15, 2010 09:00 AM. H034952 is mentioned but not addressed in this appeal.

After 42 years, July 20, 1999 the Respondent Zdenka Aster sued for dissolution of marriage.

My argument, that all community property held assets should not be divided and only the proceeds shared for life, failed and the division followed.

At that stage Zdenka and her attorney Dolly Ares realized that some assets, they specified in Judgment of dissolution, do not exist. In following campaign of extortion judge Margaret Johnson took over as already judge no. 5 on the case and enraged by my audacity to turn for help to president of US George W. Bush (App. 14) issued more confiscatory orders against my half of assets and had me jailed in Elmwood penitentiary. (Booking No.: 04004965) My court documents and letter from White House has been destroyed. I remembered the content: "We can't do much for you until the process in the courts is completed."

In prison subjected to forced experimentation with

some vaccine I am still suffering from. I sought help of Justice Sandra Day O'Connor in a letter dated September 15, 2005, remained ignored.

Seven more years of litigation followed. Extortion failing, attempt to drive me out of and sell my house awarded to me in Judgment of Dissolution failed as well. Judge Johnson than opted out of the case.

To bully me in submission the Court of Appeal labeled all my defensive actions as frivolous and set and collected $10,000 fine, equivalent of seven months of my social security.

My motion of Peremptory Challenge was filed in time after judge Mary Arand signed orders based on fraudulent information. Judge Arand denied the motion and opted out of the case before resolution of this appeal.

Judge Margaret Johnson, responsible for all mistreatment of me, re-appeared on the case and in latest development, November 17, 2010 issued another Order Re: Compliance with Judgment and Other Amounts. The Order supersedes all hers and judge Arand's orders this time to the amount $849,192.57 exceeding my total net worth after

division mandated by Judgment of Dissolution, the order I had to appeal again as H036381.

Notes on Appellate Opinion.

The Court of Appeal is refusing to recognize that at the core of dealing with securities of divorcing litigants is fraud and theft performed or inspired by attorney Dolly Ares and condoned by judges Arand and Johnson. I can only beg this court to review text of Opening Brief (App. 9) and text of Oral Argument (App. 12) to form its own opinion.

Attorney Dolly Ares and her client are so confident with rulings of appellate court that, even accused of theft, fraud and extortion, do not file a Response Brief. Such conduct is hard to explain other way than as an example of corrupt influence of attorneys contributing to court's reelection campaigns.

The Court of Appeal, well aware of history of the case, is analyzing CCP170 to details of applicable precedent and somehow late finds that "An order striking a statement of disqualification is not appealable ..." while entirely ignoring my prayer to appoint an impartial judge who will not treat me in spirit of Mengele of Auschwitz.

REASONS FOR GRANTING THE PETTITION

The Appellate Court departed from accepted and usual course of judicial proceedings in condoning Superior Court's assistance in respondent's theft and fraud while failing to protect me in defense of my home and retirement assets.

Maintenance of trust in Court's fairness is in public interest.

CONCLUSION

The petition for certiorari should be viewed as cry for justice of an abused elderly and granted.

Respectfully submitted on December 27, 2010

Herman Aster

APPELLATE OPINION

NOT TO BE PUBLISHED FILED Aug 3 2010

IN THE COURT OF APPEAL OT THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

In re Marriage of ZDENKA and
HERMAN ASTER.
ZDENKA ASTER Respondent,
HERMAN ASTER Appellant.

H034855
(Santa Clara County Super. Ct. No. FL086124)

Herman Aster returns to this court for a "final resolution" of his dispute with his former wife, respondent Zdenka Aster. [1] On this fifth occasion appellant seeks review of an order denying his peremptory challenge brought under Code of Civil Procedure section 170.6, subdivision (a)(2), [2] and striking his accompanying affidavit pursuant to section 170.4, subdivision (b). We will affirm the order.

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[1] Respondent, to whom we will refer as "Zdenka" for convenience, has not filled a response.

[2] All further references are to the Code of Civil Procedure

Background

Appellant has brought multiple challenges to superior court orders over the 10year history of the litigation between him and Zdenka. All of those rulings have been upheld on appeal, and on the last occasion (H032641) appellant was ordered to pay sanctions for pursuing a frivolous appeal under California Rules of Court, rule 8.276(a). The present challenge appears to have been precipitated by an order by the Honorable Mary E. Arand on July 27, 2009. That order directed appellant to bring to court a $35,187.86 dividend check he had received from British Petroleum (BP) and turn it over to Zdenka. Appellant had 20 days, until August 10,2009, to comply with the order; If he did not do so, the court would instruct BP to stop payment on the check and reissue it to Zdenka.

On August 13,2009, appellant filed a peremptory challenge under section 170.6, on the ground of "prejudice" toward him. Appellant explained that "Judge Mary Arand developed too cozy relation with attorney of

opposing party Dolly Ares ... and hostile to me to the extent of issuing asset disposition orders while Case 08-1563 is pending in Supreme Court of United States and confiscating orders in the matter of certain British Petroleum Prudhoe Bay securities while Case 108CVl 02611 is pending in Civil division of this court. Orders, between other, with purpose to collect attorney fees. [~] Further, authorizing attorney Dolly Ares to conduct proceedings of Examination with questions as impertinent as disclosure of Social Security number to facilitate more extortion."

Appellant did not attach a proof of service to this document, a fact noted by the court in its ensuing order. [3] Addressing the merits of the challenge and the apparent assertion of actual bias, Judge Arand made the following findings. First, appellant's section 170.6 motion was untimely. The family law case had been reassigned to Judge Arand for all purposes on March 7, 2008, and appellant had

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[3] The only proof of service in the record is attached to a "LETTER RE: PREJUDICE" written and served the previous day on Zdenka's attorney. The proof of service, but not the letter, bears a filing stamp in superior court.

first appeared before her on April 21, 2008. He therefore had notice of her assignment clearly as of that hearing date. Appellant then had 10 days to submit a section 170.6 challenge, but did not do so until almost 16 months later, after eight hearings before Judge Arand.

Judge Arand then addressed what appeared to be an allegation of actual bias under section 170.3, subdivision (c)(1). Appellant's statement, she found, did not contain any *facts* justifying disqualification, but consisted merely of complaints about past rulings she had made. Appellant's belief that the judge was "too cozy" with respondent's counsel was insufficient to support his request.

Accordingly, on August 21,2006, the court denied the section 170.6 peremptory challenge and struck the affidavit under section 170.4, subdivision (b). This appeal followed. [4]

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[4] "An order striking a statement of disqualification is not appealable; it may only be challenged by a petition for writ of mandate filed 'within 10 days after service of written notice of entry of the court's order .... ' (Code Civ. Proc., § 170.3, subd. (d).)" *(Carl v. Superior Court* (2007) 157 Cal.App.4th 73, 75.)

Discussion

It is difficult to discern the gravamen of appellant's argument. He relates a brief history of his failed relationship with his attorney, who together with Zdenka's counsel, "started to conspire against [his] interests." He mentions the "strategy to drive [him] out" of his house and "confiscate" his half of securities he says were already divided, and he asserts fraud in the division of some other securities. He notes that "[t]he last attempt to sell the house, appealed as H032641, failed even before the corresponding decision of Supreme Court of US in 08-1563." [5]

But no argument accompanies this history. After his summary of the proceedings (including subsequent orders not before us in this appeal), appellant says only, "I, the Appellant beg the Court of Appeal to consider my Peremptory Challenge and be instrumental in appointment of a Superior Court judge not indebted to attorney Dolly

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[5] H032641 was appellant's fourth appeal in this family law matter. On that occasion the superior court issued an amended order for the sale of the parties' house to ensure payment of the money appellant owed Zdenka resulting from the division of marital assets .. We affirmed the order and imposed the appellate sanctions referred to earlier. The number 08-1563 was assigned to the case while it was pending in the California Supreme Court.

Ares to review the case FL086124." Appellant makes no attempt to excuse the delay in filing his peremptory challenge or his affidavit, nor does he cite any factual basis for disqualification besides his unhappiness with Judge Arand's rulings. In short, no error is shown or even suggested in this appeal.

Disposition

The order is affirmed

ELIA, J

WE CONCURE

RUSHING, P. J.

PREMO, J.

In re Marriage of Aster

H034855

OFFICE OF THE CLERK
CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT
333West Santa Clara Street, Suite 1060
San Jose, CA 95113
Phone: (408) 277-1004
August 26,2010

Herman Aster
2167 Riordan Drive
San Jose, CA 95130

RE: In re Marriage of ZDENKA and HERMAN ASTER
ZDENKA ASTER, Respondent,
v.
HERMAN ASTER, Appellant.
H034855
Santa Clara County No. FL086124

Dear Sir/Madam:

Your Petition for Rehearing is returned herewith for the following reason(s):

Permission to file was denied.

Very truly yours, MICHAEL J. YERLY,

Clerk

S. Nasson Deputy Clerk

Cc: Dolly Ares

Court of Appeal, Sixth Appellate District – No. H034855

S186142

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re Marriage of ZDENKA AND HERMAN ASTER

ZDENKA ASTER, Respondent,
v.
HERMAN ASTER, Appellant

Petition for review DENIED.

GEORGE
Chief Justice

FILED
OCT 13 2010
Frederick K. Ohlrich
Clerk - Deputy

H034855 Text of the body of Opening Brief

The nature of this action is to reach final resolution of the case FL086124 in Superior Court by appointment of a judge capable to review the case impartially.

The Order Denying Peremptory Challenge (CT pg. 9) is final.

Summary of significant facts.

Zdenka Aster has filled the petition for Dissolution of Marriage in July 1999 after 42 years of marriage on grounds of Irreconcilable Differences to mask-off marital betray. The attorneys on the case, Dolly Ares (BN87786) for petitioner and Barbara Brock (BN135265) for me started to conspire against my interests. After realizing scope of conspiracy, I fired attorney Brock but not before they filled At Issue Memorandum opening gate to the trial April 10, 2000. Resulting Judgment of Dissolution filed December 12, 2000 listing some non-existent assets enabled the Petitioner and her attorney to campaign of extortion.

When even jailing me did not yield any assets in question the Petitioner embarked on strategy to drive me out and sell the house awarded to me in Judgment and confiscate my half of already divided securities. The last attempt to sell the house, appealed as H032641, failed even before the corresponding decision of Supreme Court of US in 08-1563. A fraud committed in the matter of BP Prudhoe Bay securities is addressed in separate case CV102611. Fraud in division of Bristol Myers Squib securities discovered recently is being investigated.

Ten years later, thirty-four hearings and over two hundred documents filed the Superior Court; Honorable Mary E. Arand well aware of all developments in the case approves petitioners at places confused confiscatory orders. (See CT pg. 1-5) Peremptory Challenge CCP170.6 (CT pg. 6) is denied and my Reply (CT pg. 13) is ignored leaving me with no option but to appeal October 14, 2009 (CT pg. 18) no doubt to be labeled again as frivolous. November 24, 2009 after four months delay (CT pg. 15) without any hearing the Court somehow resumes and signs an Order awarding

attorneys fees in amount $23,317.31 plus cost. Requesting letter (CT pg. 23-25) cannot be located in the case file. See Certificate CT pg. 27. My access to the file is denied. Initiative always comes from and gain goes to attorney Dolly Ares.

In conclusion

I, the Appellant beg the Court of Appeal to consider my Peremptory Challenge and be instrumental in appointment of a Superior Court judge not indebted to attorney Dolly Ares to review the case FL086124.

San Jose February 17, 2010 Herman Aster

H034855 Text of Oral Argument

Honorable Court of Appeal, here I, Herman Aster present Oral argument in case H034855.

In short recapitulation, this appeal has been filed October 16, 2009 after order denying Peremptory Challenge against Honorable Mary E. Arand. Details are in Opening Brief. Since than judge Margaret Johnson appointed without decision of appellate court or respect for CCP170 continues to issue confiscatory orders in defiance of presumed Stay. Judge Johnson is unfit for the task as one that had me jailed in unsuccessful extortion of nonexistent assets, certainly not capable to be impartial in my case.

Motions to augment appellate record granted and later denied by this court compelled my request for Oral argument. At issue are two confiscatory orders:

FOAH dated April 15, 2010 attempting to confiscate 800 shares representing my half of Bristol Myers Squib security awarded to me in Judgment of Dissolution. The action based on theft of certificate NB688407 has been so far unsuccessful.

FOAH dated May 6, 2010 attempting to confiscate 1500 shares representing my half of BP Prudhoe Bay stock and dividends since 2004. The matter of the Stock is at issue in case 108CV102611 while theft of dividends already succeeded in amount of $53,335.

In conclusion of my Oral Argument I repeat my prayer in Opening Brief to appoint an impartial judge to review the case FL086124 in hearings September 21 and October 6, 2010 on the calendar and rescind all already issued confiscatory Orders.

As a clerical matter I am bringing to attention of the court that I will be unavailable to receive any court documents and respond until September 20, 2010.

Letter to:

Honorable George W. Bush
President of United States
1600 Pennsylvania Ave., NW
Washington, DC 20500

SCANNED
WH339465
DOJ491422
Received
Nov 13 2003

San Jose October 24, 2003

Dear Sir.

Short story I have to tell sounds so unreal, I can only pray you will believe. Caught in the high of Cold War on the wrong side of Iron Curtain I have been tricked in marriage by communist sympathizer acting on clues of her masters. Learning my fate too late and unable to correct my fatal mistake I cared for my "family" for 42 years. Finally, I was sued for divorce on the grounds of immoral California No Fault Divorce Law, no more useful as provider.

In the dissolution process run by two conspiring attorneys, treated as violent paranoid, fraud has been employed and covered-up in court, evidence of special circumstances of the case suppressed and an outrageous Judgment secured against me.

Two years of bitter struggle for justice followed. Exhausting all my appeals in United States, I declared my intent to seek protection of United Nations High Commissioner for Humane Rights and filed Notice of Appeal only to be ignored and bullied into submission by second enforcement Order calling for compensatory payment far in excess over current value of all assets available to me after division.

I came to this country from communist slavery to promise of freedom and justice to be robbed in court by a treacherous communist parasite I foolishly cared for most of my life. Deprived of my day in Supreme Court of United States I can only beg you Sir to use power of your office to demand declaration of stay followed by Judicial Review of the case to protect me from progressing robbery until the case is resolved.

Yours sincerely

Herman Aster
2167 Riordan Drive
San Jose, CA 95130

Attached: Petition For Writ Of Certiorari to Supreme Court of United States
Notice of Appeal to United Nations High Commissioner for Human Rights
Order

Cc: Honorable Mary Ann Grilli, Judge of the Superior Court, 170 Park Center Plaza,
San Jose, CA 95113

Case no.: 1-99-FL086124

Department of Justice
RECORD
144-11-0
DEC 11 2003